

JOSEPH P. RUSSONIELLO (CSBN 44332)
 United States Attorney
 JOANN M. SWANSON (CSBN 88143)
 Chief, Civil Division
 JENNIFER S WANG (CSBN 233155)
 Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
 San Francisco, California 94102-3495
 Telephone: (415) 436-6967
 Facsimile: (415) 436-6748
 Email: jennifer.s.wang@usdoj.gov

Attorneys for the Federal Defendant

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

ESTATE OF DAVID BURKHART,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
 VETERANS AFFAIRS; and DOES 1 to 50
 inclusive.

Defendants.

No. C 07-5467 PJH

**~~PROPOSED~~ ORDER GRANTING
 FEDERAL DEFENDANT'S MOTION
 TO DISMISS**

Date: May 28, 2008
 Time: 9:00 a.m.
 Courtroom 3, 17th Floor

This action having come regularly on for hearing before the Court on the motion of the federal defendant to dismiss pursuant to F.R.C.P. 12(b)(6), and the respective parties having been afforded an opportunity to be heard, the Court having considered the respective pleadings and the arguments thereon, and the entire matter having been duly submitted after the Court was fully advised thereon,

IT IS HEREBY ORDERED that the defendant's motion to dismiss is GRANTED based on the following reason:

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1 1. The only proper defendant in a Federal Tort Claim Act action is the United States.
2 Because defendant, the United States Department of Veterans Affairs, is an agency, it is not a
3 proper defendant.

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5 DATED: 5/14/08

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7 2. PLAINTIFF SHALL FILE AN AMENDED
8 COMPLAINT NO LATER THAN
9 JUNE 4, 2008, NAMING THE UNITED
10 STATES AS A DEFENDANT.

11 3. THE MAY 28, 2008 HEARING DATE IS
12 VACATED.
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

[PROPOSED] ORDER GRANTING FEDERAL DEFENDANT'S MOTION TO DISMISS

Estate of David Burkhart v. VA
Case No. CV 07-5467 PJH

to be served this date upon the party in this action by placing a true copy thereof in a sealed envelope, and served as follows:

☒ **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

☐ **CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

☒ **ELECTRONIC MAIL** (*See Below*)

☐ **FEDERAL EXPRESS**

☒ **PERSONAL SERVICE (BY MESSENGER)**

☐ **FACSIMILE (FAX)** Telephone No.: See Below

to the party(ies) addressed as follows:

Estate of David Burkhart
483 Nottingham Way
Campbell, CA 95008
(408) 371-0646
sallyburkhart@gmail.com
PRO SE

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on April 4, 2008 at San Francisco, California.


BONNY WONG
Legal Assistant